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FRA- 2004-18746

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FEDERAL RAILROAD ADMINISTRATION

DEPT. OF TRANSPORTATION
ELECTRIFICATION

In the Matter of:

UNION PACIFIC
RAILROAD PUBLIC
HEARING

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Docket No. FRA ~~187-46~~

2004 OCT 20 P 4:00

2004-18746-35

 ORIGINAL

Friday,
October 1, 2004

1120 Vermont Avenue, N.W.
Conference Room 1
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice at 9:00 a.m.

PANEL:

GRADY C. COTHEN, JR.
JAMES WILSON
ROBERT J. CASTIGLIONE
MARK MCKEON
THOMAS J. HERRMANN
DAVID BLACKMORE

SPEAKERS:

GARY DAVIDSON
FRANK HERNANDEZ
LYN FAULKNER
BOB OPAL
RICHARD STREETER
RICHARD JOHNSON
TERRY BRIGGS
ROBERT HARVEY
DANIEL ELLIOTT

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P R O C E E D I N G S

(9:00 A.M.)

MR. COTHEN: Good morning.

This is the Federal Railroad Administration Public Hearing on waiver petition by the Union Pacific Railroad. FRA Docket 187-46. The request is to be relieved of the responsibility to do certain mechanical inspections for designated trains moving northbound over the railroad bridge at Laredo proceeding to destination under FRA Regulations following the completion of four mechanical inspections and tests by the delivering carrier, PFM.

Let me, if I may, give you, for anyone who may have missed these developments a little background on this request.

First of all, however, let me introduce the FRA team here today. We have got, on my far right Rob Castiglione, who is our Deputy Regional Administrator in Fort Worth, Texas. Jim Wilson, Motor Power Equipment Specialist here in the Office of Safety Assurance and Compliance. Mark McKeon, who is a Regional Administrator in Region I, member of the Railroad Safety Board. To my left Tom Herrmann, member of the Railroad Safety Board, legal counsel for the Board, Senior Legal Counsel on mechanical issues in the

1 Office of Chief Counsel and legal officer for this
2 hearing. So he wears lots of hat. And we have David
3 Blackmore, who is Deputy Regional Administrator, Region
4 IV, headquartered in Chicago. In addition, a minute
5 ago you met Ed Prichard, Director of the Office of
6 Safety Assurance and Compliance. I would like to call
7 attention to the presence in the room of Bonnie Murphy,
8 our Regional Administrator. Wave your hand, Bonnie in
9 Fort Worth, Texas. And then we have other members of
10 our staff here including Deputy Associate Administrator
11 Michael Loeveer(ph) in the back of the room.

12 Historically for some years now on the North
13 American Continent, we all have kind of have an
14 envision to have North American railroads that could
15 serve us in a fluent manner and initially we have
16 realized some of that on the northern border with
17 Canada by cooperating extensively with Transport
18 Canada, our sister agency, and by virtue of the fact
19 that there is a great deal of common ownership
20 cooperation and use of common interchange standards
21 over the border and then there has been historically.
22 As a result, the Federal Railroad Administration has
23 founded quite natural to recognize mechanical tests and
24 inspections conducted in Canada as suitable predicates
25 for entering the United States without necessary of

1 stopping at the border and duplicating those tests and
2 inspections. Canada provides reciprocal treatment for
3 movements into that country.

4 With the adoption of the North American Free
5 Trade Agreement, we all set out to in a more organized
6 way to try to ensure harmonization of railroad safety
7 standards on this continent. And that has been ongoing
8 for a number of years now.

9 Including very active talks between,
10 currently between, bi-laterally, between the United
11 States and Mexico with the objective of harmonizing our
12 standards. This past spring we began to get inquiries
13 from Union Pacific Railroad, which was interested in
14 trying out more fluent movement designated priority
15 trains through Laredo.

16 On May 18 of this year, the Federal Railroad
17 Administrator, Deputy Administrator posted a meeting
18 and conference call. Among the invited parties to
19 include the Railroad, the Rail Labor organizations and
20 FRA with the purpose of trying to identify issues and
21 acquaint all parties of interest with the, the
22 expressed interest of Union Pacific to move forward in
23 this area. The parties were encouraged to consult not
24 only locally, but also at whatever appropriate level
25 that might be. And, in fact, all the organizations on

1 that call identified points of contact for
2 consultation.

3 On June 10 of this year, the acting Federal
4 Railroad Administrator and several of us, including
5 Regional Representatives, did a familiarization trip to
6 Laredo, to take a look at the facilities, basically.
7 After petition in this docket was filed, since it was
8 filed and we published Federal Register notice, we have
9 had requests for extension of time to comment, which
10 were granted in part and a request for this hearing,
11 which bring us here today.

12 There is, apart from what you find in the
13 public docket, which, of course, is available online, I
14 think the only other development that I would call
15 attention to is a communication from TFM, I think on
16 behalf of TFM and Tex Mex, indicating their desire at
17 some point to be included in any relief granted in this
18 docket. And that communication being placed in the
19 docket, not yet done so, but it is on its way through
20 scanning and reproductions.

21 So, we are here today to hear testimony. We
22 will collect information and views and Tom Herrmann
23 will describe to us procedurally how we will go
24 forward.

25 MR. HERRMANN: All right. Good morning.

1 Today's hearing will be conducted in
2 accordance with the Rules of Practice of the Federal
3 Railroad Administration published in Title 49 of the
4 Code of Federal Regulations at Part 211.

5 Today's hearing will be informal. It will
6 not be an adversarial proceeding. Rules of Evidence
7 will not apply and cross examination of witnesses will
8 not be permitted.

9 This public hearing addresses waiver petition
10 Docket Number FRA 2004-18746. Published in the Federal
11 Register on August 10, 2004.

12 The purpose of this hearing is fact finding.

13 It is not meant to be a forum for a debate on the
14 petition now before us, rather as an opportunity for
15 you to provide relevant information to FRA and a
16 mechanism to place your views on the record for later
17 review and consideration.

18 In order to permit each of you an equal
19 opportunity to express your views and comments the
20 following procedures will be used:

21 Each person who wishes to do so will be
22 permitted to make an oral statement. At the beginning
23 of your oral statement, please identify yourself, spell
24 your name for the court reporter and indicate whether
25 you are appearing as an individual or in a

1 representative capacity. At the conclusion of witness
2 statement, the Hearing Officer and Technical Panel may
3 question the witness to clarify the witness' testimony.

4 After questioning by the Hearing Officer and the
5 Technical Panel, questions for the witness will be
6 taken from the audience. FRA does not permit cross
7 examination of witnesses about the justification for
8 their comments or the validity of their reasoning.
9 However, FRA does permit questions for the purpose of
10 resolving ambiguities, defining terms and otherwise
11 clarifying the substance of any testimony.

12 At the conclusion of all questions for a
13 given witness, we will move onto the next witness. If
14 a document that you will be referring to today has not
15 yet been furnished to FRA, please submit a copy to the
16 Hearing Officer and to the court reporter so it may be
17 marked for identification and made part of the public
18 docket. A transcript of today's proceeding is being
19 taken. We will not go off the record in this hearing
20 unless so stated by the Hearing Officer. The
21 transcript is being prepared by a private, non
22 governmental reporting service under contract with FRA.

23 The transcript of this proceeding and all
24 filed comments are available for inspection in Room
25 PL-401 on the Plaza level of the NASIT building at 400

1 7th Street, S.W., Washington, D.C. between the hours of
2 9:00 a.m and 5:00 p.m. Monday through Friday. Anyone
3 wishing to purchase a copy of the transcript, may make
4 their own arrangements with the reporting service by
5 speaking to the reporter here today.

6 In addition, the entire contexts of the
7 docket, including the record of this hearing and all
8 filed comments are available for viewing and
9 downloading on the Internet at <http://dms.dot.gov>.

10 Thank you.

11 MR. COTHEN: Thanks, Tom.

12 Appearances today, of course, first of all we
13 have the petitioner, joined by TFM. Secondly, we will
14 have Mr. Rich Johnson, President of the Railroad
15 Carmen. Following by Terry Briggs and Robert Harvey of
16 the LET and Dan Elliott of UTU.

17 Are there others in the room who would like
18 to provide testimony today who have not yet identified
19 themselves to the Council or Chair?

20 Yes, sir.

21 MR. STREETER: I would like to speak.

22 MR. COTHEN: Okay. Thank you, Mr. Streeter.

23 We will proceed then with the panel on behalf
24 of Petitioner, Mr. Davidson, do you want to start and
25 introduce your colleagues?

1 PRESENTATION BY GARY DAVIDSON:

2 MR. DAVIDSON: Yes, sir. Good morning. I wold
3 like to thank the FRA for this opportunity to present
4 our waiver request in this proceeding.

5 My name is Gary Davidson, G-A-R-Y,
6 D-A-V-I-D-S-O-N. I am the General Superintendent of
7 Transportation Services for Union Pacific, San Antonio
8 Service Unit.

9 With me here today is Frank Hernandez, Vice
10 President of Operating Support for the TFM and Lyn
11 Faulkner, General Director, Car Operations for UP.

12 We are requesting in the waiver that FRA
13 permit train brake and mechanical inspections which TFM
14 performs in Mexico a few miles from the U.S.-Mexican
15 border on certain run through trains be considered
16 valid for movement into the United States. This will
17 allow these trains to operate through Laredo and
18 continue their designated 1,000 mile inspection
19 location. This is the same way train brake and
20 mechanical inspections are handled on run through
21 trains received from Canada as well as run through
22 trains interchange between two United States railroads.
23 The inspections performed on the first railroad are
24 valid for movement on the second. And there is no
25 reinspection required at the interchange. It is also

1 the same way that brake and mechanical inspections are
2 handled on run through trains which UP interchanges to
3 TFM at Laredo for movement into Mexico.

4 We have given FRA a very comprehensive waiver
5 petition describing why we need this waiver and how it
6 will work. Copies of the petition are in the white
7 binders before you. Let me summarize the key points.

8 We have a very serious congestion problem at
9 Laredo. The amount of rail traffic being handled
10 between Mexico and the United States has skyrocketed,
11 particularly since NAFTA. In 1989, for example, only
12 about four trains a day operated between the U.S. and
13 Mexico via Laredo. Today, it is common to handle
14 twenty four or more trains a day.

15 A major cause of the congestion at Laredo is
16 the need to do brake and mechanical inspections on the
17 run through trains we receive in interchange from TFM.

18 Under our current procedures we perform a mechanical
19 and Class 1 brake inspection on these trains at our
20 downtown Laredo Yard. The RG Runaround track used for
21 these inspections has over 30 grade crossings. The way
22 we normally operate is to pull the two trains into this
23 track, one behind the other, for mechanical and brake
24 inspections. Both trains must then be broken into
25 multiple segments, as many as 15 per train, to clear

1 the grade crossings. Then we perform the mechanical
2 inspections. After these are done, the trains are
3 coupled back together for their Class 1 brake test,
4 which causes the grade crossings to be blocked for one
5 to two hours or more. The entire process of pulling
6 trains into the RG Runaround Track, breaking the
7 crossings, doing the mechanical inspections, coupling
8 the trains back together and doing the Class 1 brake
9 test results in five to seven hours of delay per train.

10 These delays are particularly frustrating because TFM
11 is fully capable of inspecting these trains to FRA
12 standards only a few miles on the other side of the
13 border in Mexico, and is prepared to do so.

14 Our proposed solution to this problem is to
15 allow the brake and mechanical inspections performed on
16 the Mexico side of the border to be valid for movement
17 in the United States, as we have requested in our
18 waiver. This would eliminate five to seven hours of
19 delay on over 1,000 trains per year, and free up track
20 space in Laredo for other rail traffic. This is an
21 important NAFTA initiative. No other single initiative
22 has the prospect of having such an immediate impact on
23 transit time and customer satisfaction on international
24 traffic moving through the Laredo Gateway. It will
25 also have a positive impact on Laredo and its citizens

1 by eliminating the crossing blockages that result from
2 the current reinspections.

3 We are confident that TFM is capable of
4 inspecting trains to FRA standards. Mr. Hernandez of
5 TFM will discuss TFM's training procedures and the
6 quality of its inspections. All documentation required
7 by FRA, such as air brake certificates, dynamic brake
8 status and the like, will be provided to you UP by TFM
9 in dual language format, as shown in our waiver
10 petition. All records required by FRA will be kept in
11 the United States, where they will be available to FRA
12 personnel, as well as at TFM's Nuevo Laredo and
13 Monterrey offices. As you know, TFM has agreed in
14 their letters of July 13 and July 23 to inspections by
15 FRA in Mexico. UP will also put in place a Quality
16 Assurance Plan with TFM to verify that the TFM
17 inspections are being performed to FRA standards.
18 Under this Plan, UP will inspect at least two TFM
19 inspected run through trains per week. These
20 inspections will be performed either at the Laredo or
21 San Antonio terminal complex. The results of UP
22 inspections will be recorded and reported to TFM, and
23 will be furnished to FRA upon request. We will also
24 conduct a monthly review of these inspections with TFM
25 personnel, and FRA inspectors will be invited to

1 participate in these monthly reviews.

2 Finally, I would like to address two issues
3 that have come up since we filed our waiver petition.
4 First, when we filed the waiver, we anticipated that
5 the Tex Mex Railroad would keep FRA required records at
6 its Serrano Yard offices, where they would be available
7 to FRA. Since then, we have learned that Tex Mex is
8 unwilling to keep records for UP traffic. As such, UP
9 will either keep these records at its San Antonio
10 offices or will make other arrangements for FRA to have
11 access to these records in the United States that are
12 acceptable to FRA. Second, there have been some
13 questions raised about what trains will be covered by
14 this waiver and how they will be designated.
15 Currently, TFM is performing FRA Class 1 brake
16 inspections and mechanical inspections on UP train
17 ZMXYC, which is an intermodal run through train. If
18 the waiver is approved, we anticipate it will be
19 initially used for about three trains per day, although
20 the number will vary from day to day. The way trains
21 will be designated is that trains operating under the
22 waiver will carry a TFM air brake certificate, as shown
23 in Tab 17 to the waiver petition.

24 In conclusion, I urge FRA to approve this
25 important NAFTA initiative to expedite international

1 run through trains operating from Mexico to the United
2 States.

3 PRESENTATION BY FRANK HERNANDEZ:

4 MR. HERNANDEZ: Thank you. My name is Frank
5 Hernandez, F-R-A-N-K, H-E-R-N-A-N-D-E-Z. I am Vice
6 President of Operations Support for TFM and I am here
7 in that capacity today, to represent.

8 Good morning. I would like to begin by
9 thanking the Federal Railroad Administration, the Union
10 Pacific and in particular all of you for the
11 opportunity to be here today in support of this waiver.

12 As Mr. Davidson stated, my name is Frank P.
13 Hernandez, I am Vice President of Operations Support
14 for TFM and am based out of Monterrey, Mexico. In my
15 capacity as VP Operations Support, I am responsible for
16 various areas of our operation. Among them, ensuring
17 TFM's compliance with the Federal Regulations of the
18 regulatory agencies we deal with, in or out of Mexico.

19 In this particular case, FRA.

20 I have worked within the railroad industry
21 for almost 32 years. The first 24 years were in the
22 U.S. with the former Santa Fe, later BNSF. For almost
23 eight years now, since 1997, I have been working in
24 Mexico, due to the privatization of the Mexican
25 railroad industry by way of my affiliation with the

1 U.S. railroad industry. However, even though I am
2 working in Mexico, I interact daily with the U.S.
3 railroads, which are our biggest interchange partners
4 and with the regulatory agencies, in particular FRA,
5 which oversee their safe and efficient operation.

6 TFM has same concerns as the U.S. railroads
7 as it relates to the safety of our employees and the
8 public. The operational challenges that TFM faces at
9 the border and in Nuevo Laredo, are nearly identical to
10 those of the Union Pacific faces in Laredo. In effort
11 to improve fluidity of operations without compromising
12 safety, TFM began in 2001, accepting the inspections in
13 air brake tests conducted by the UP on southbound run
14 through trains destined to Monterey and beyond. This
15 was seen as a significant NAFTA related initiative, and
16 was looked upon favorably by the Secretaire de
17 Comunicaciones y Transportes, better known as the SCT,
18 the Mexico Regulatory Agency and had a positive effect
19 on TFM's image in the community and upon our
20 operations. Fluidity and yard capacity at Sanchez in
21 Nuevo Laredo approved and the time vehicular grade
22 crossings were blocked in Nuevo Laredo was greatly
23 reduced. It was a win-win-win situation for TFM, UP
24 and our respective communities. UP's request for this
25 waiver, if approved, completes the reciprocal nature of

1 the initiative and will facilitate even greater NAFTA
2 fueled increases in international traffic through the
3 Laredo Gateway.

4 The railroad industry of Mexico and TFM, in
5 particular, has changed dramatically since 1997. From
6 the outset, TFM's goal has been to adopt and/or emulate
7 the good practices that our U.S. and Canadian
8 counterparts have in effect on their properties
9 combining them with the good practices we found to be
10 in place, upon our arrival in Mexico.

11 Ladies and Gentlemen, TFM is not the old
12 Ferrocarriles Nacionales de Mexico, which many of you
13 know as FNM. We do not operate in the same manner as
14 the former FNM and strive for excellence in our
15 operations by way of safe and efficient operating
16 practices. With very few exceptions, we operate in the
17 same manner as do our U.S. and Canadian counterparts.
18 Most of TFM's operating practices and rules are
19 identical to those of the Union Pacific and other Class
20 1 railroads in North America. This is not a mere
21 coincidence, rather, it is part of a well designed plan
22 that we put into place as a company wherein we could
23 make rapid, safe and efficient operational changes,
24 without having to reinvent the wheel.

25 One of the ways in which we have been able to

1 achieve many of the positive changes which have
2 occurred, is by way of improving our training, excuse
3 me, by way of improving the training that our employees
4 receive. Training is top priority to TFM, and we do
5 not limit training to the best trainers in Mexico, but
6 acquire training assistance from other countries as
7 well. All of our Transportation supervisors and
8 instructors receive refresher training at the NARS
9 Institute, which is the National Academy of Railroad
10 Sciences, every year, in order to stay abreast of the
11 best operating practices that will help us continue to
12 work in a safe and efficient manner. Specifically
13 related to this waiver request, all of our Mechanical
14 Department personnel involved with our border
15 operations are international traffic have received
16 additional or refresher training on all applicable
17 parts of 49 CFR. Earlier this year, our personnel
18 received additional required training on Part 232.
19 This training was provided by way of the International
20 Technical Training Services Group, and the National
21 Academy of Railroad Sciences. NARS is also the same
22 training institute that provides training to U.S.
23 Railroad personnel and many FRA field inspectors. This
24 training is simply a continuation of the training
25 programs we have in place at TFM, wherein our personnel

1 receive both classroom and hands on training that helps
2 us ensure that our personnel can put into practice in
3 the field those things they learned in the classroom.
4 Our hands on field training programs have allowed us to
5 participate equally in joint mechanical inspections
6 with experts from FRA, the Texas Railroad Commission,
7 and numerous U.S. railroads and derailments related to
8 mechanical causes are at their lowest level since the
9 start of our operations. Our mechanical inspections
10 are second to none and must remain at that level in
11 order for us to operate in the safe and efficient
12 manner that is so critical to us. We operate in
13 accordance with the same standards as U.S. railroads as
14 it relates to FRA and AAR regulations.

15 I would again like to emphasize the fact that
16 while TFM is based in Mexico, we are truly an
17 international railroad and our operations require us to
18 have the knowledge and adherence to the regulations of
19 the U.S. regulatory agencies and not only those of
20 Mexico. As I have previously stated, we are not the
21 old FMN. We are just like you, in the sense that we
22 must operate safely, using the best practices
23 available, in order to be profitable and survive in
24 this very competitive industry.

25 TFM will continue to work closely with the

1 U.S. regulatory agencies, in particular FRA, as well as
2 with the railroads and suppliers that will help us
3 maintain the high standards we have set for our
4 operations.

5 In closing, I would like to again state how
6 strongly TFM favors this waiver application and
7 believes in the benefits to be derived, on both sides
8 of the border, with the granting of this waiver.
9 Further, I believe these benefits can be realized with
10 absolutely no compromise to safety of operations. This
11 has simply been a quick glance at some of the things we
12 have done in order to improve our company and make such
13 reciprocal operating changes possible. Obviously, in
14 my attempt to provide a brief and concise presentation,
15 I may not have specifically addressed an issue that my
16 be of particular interest to you. Therefore, please
17 feel free to ask any questions you may have of me.

18 Thank you.

19 MR. COTHEN: Thank you very much, Gentlemen.

20 Let me just start with a question about the
21 inspection facilities and arrangements currently, Mr.
22 Hernandez, in June you were planning, I believe kind of
23 redeployment from, it was referred to as passenger
24 yards and go out to the new Sanchez facility, I
25 believe.

1 MR. HERRMANN: That is correct. We have a
2 yard facility which is, has been surrounded by the
3 city, encompassed by the city and limits our
4 operations. With the growth of the traffic, our plan
5 is do just as you said conduct all our mechanical
6 inspections at our Sanchez facility, which is
7 relatively new. And it is sufficiently large to allow
8 us to make those inspections.

9 MR. COTHEN: And would repairs be made at this
10 as well?

11 MR. HERRMANN: Yes.

12 MR. COTHEN: And should the waiver be granted,
13 would Federal Railroad Administration personnel have
14 unrestricted access, reasonable times in a reasonable
15 manner, to TFM facilities where these inspections and
16 tests are conducted and to the records of those tests
17 on site?

18 MR. HERRMANN: Any time that FRA requests of
19 that access, it would be readily available.

20 MR. COTHEN: Questions from other of our
21 colleagues here? Mr. McKeon?

22 MR. McKEON: Question for Mr. Davidson. What
23 percentage of your cars are currently being found with
24 one or more FRA or AAR defects during the UP
25 inspections for these transporters?

1 MR. DAVIDSON: I think I would refer that to
2 question to Mr. Faulkner of the Car Department.

3 MR. FAULKNER: Lyn Faulker, L-Y-N,
4 F-A-U-L-K-N-E-R.

5 I have some handouts that I will give you,
6 Mr. McKeon and the rest of the panel that I think will
7 answer any of those questions and then you may look at
8 those.

9 We solicited the records from the Carmen who
10 make the inspections at Laredo, as well as pulling the
11 AAR billing history to acquire two sets of information.

12 The draft that you have that in the aqua green,
13 reflect the number of bad order defects found by the
14 carmen at Laredo on Union Pacific property. One thing I
15 would like to point out is it says total cars that have
16 routes northbound from Mexico, these are the number of
17 cars that have been accumulated only on the AMXAF, the
18 ZMXYC and various grain trains. They do not include
19 all cars moving across the border. This is information
20 that is reflective of the trains that we wish to have
21 as our designated run through traffic. So, when you go
22 through and look at this, the first page after the
23 cover sheet, illustrates the number of defect ratios
24 found from January to July on all of those trains that
25 move through that Gateway. Following through the

1 packet, we break it down by train types, so that you
2 can see by train what type of defects were found.
3 Again, this information was garnered by the Carmen
4 inspection records that resulted in bad orders being
5 set out for repair.

6 The second set of draft that you received,
7 which are blue, are the reflections of repairs made by
8 those same carmen that were made in trains. And did
9 not necessarily result in a bad order having to be set
10 out for repair. So we tried to capture all of the
11 data. The data that is in blue is captured from AAR
12 billing, and we were able to go back and pull that by
13 train type. The first graph in blue is for the
14 articulated cars. The second graph reflects flat cars
15 and the third reflects covered hoppers, which would be
16 representative of the three types of run through
17 traffic of trains that we are looking for in the waiver
18 request.

19 MR. McKEON: I am just curious as to what type
20 of defects were most common and I see that some types
21 of defects are specified for the cars which are
22 repaired, but the cars which are set out, if I
23 understand that graphs correctly.

24 MR. FAULKNER: Yes, sir.

25 MR. McKEON: The nature and frequency of the

1 defects wouldn't be shown on the graphs?

2 MR. FAULKNER: I am sorry, they are up here at
3 the back, and I apologize. If you go about to the
4 middle, it starts with the train ID. The ZMYC trains,
5 we were, we found defects for safety appliance, we only
6 found one train in January that was bad ordered for a
7 safety appliance. We found one train in January that
8 was bad ordered for brake rigging. We found one train
9 that had a bad order in April for a wheel. One in May
10 that had a bad order for safety appliance and one in
11 July for a low shift. So, the result of the graphs
12 will clearly illustrate we are finding very little
13 defects coming across the border. In summary, the
14 number of defects found by our carmen at Laredo are
15 subsequently lower than the last set of defect ratio
16 numbers that were presented to the Union Pacific for
17 the Class 1 railroads in the country, from what I can
18 determine with the data that we were able to gather.
19 So, by defect type, the back of the graph will
20 illustrate what defects our carmen are finding on these
21 trains that come across the border.

22 MR. McKEON: Thanks. Page two of waiver
23 petition request, specifically Item E2B, talks about
24 the designated trains. The document discusses run
25 through trains and regular trains. Could you please

1 elaborate for the record how these two terms are used
2 and what is the difference in this context between a
3 regular train and a run through train?

4 MR. DAVIDSON: Yes. We get about 10 to 12
5 trains a day, northbound, from the TFM. Sixty to
6 seventy percent of those trains go to the port to be
7 switched, inspected by the carmen, reclassified and
8 then built into seven outbound trains departing from
9 the port. We call those the regular trains. These
10 are ones that are only going as far as the port, to be
11 handled in the switching facility at the port.

12 The run through trains are the ZMXYC, they
13 intermodal trains, and AMXAS trains, which are auto
14 parts and multi level type trains. And occasionally a
15 grain train, we will handle a grain train either at the
16 port or downtown, depending on how much traffic we have
17 got on a window, going through the RG track.

18 Fundamentally, a train that is a run through
19 train does not go to the port to switch.

20 MR. McKEON: Thanks.

21 H-2 in your opening statement, you refer to
22 if the waiver were granted the train would be allowed
23 to operate through Laredo to the 1,000 mile inspection
24 locations. If the waiver were granted, is that the
25 furthest distance that trains would proceed before

1 receiving a brake test and inspection in the United
2 States?

3 MR. FAULKNER: At the present time, that is
4 correct. Unless for some reason we were able to make
5 that a 1500 mile or extended haul, but right now we
6 have no reason to do that, so, 1,000 miles, they would
7 not exceed a 1,000 mile inspection.

8 MR. McKEON: H-2, Item E, discusses training,
9 Mr. Hernandez's statement also discusses training.
10 Attachment 21 to the Petition shows a course outlined
11 for 25 courses, totally 125 days of course length. And
12 I was curious as to what percentage of the TFM
13 employees who would be conducting the inspections or
14 who are currently conducting the inspections have
15 successfully completed all 125 days of their training?

16 MR. HERNANDEZ: All of the, I can't tell you
17 exactly what percentage, but 100 percent of all the
18 individuals involved with the international operations,
19 referred to the border operations, have completed that
20 training.

21 MR. McKEON: There is a course entitled, one
22 of the outlines is entitled Freight Car Train Yard and
23 one of the topics discussed is protect your rights.
24 Could you elaborate as to what that particular topic
25 deals with? As I was reviewing the course outlined, I

1 was able to figure out what most of them meant, but
2 that one kind of stumped me.

3 MR. HERNANDEZ: Okay. Could you tell me
4 exactly where it is in our, the information we
5 submitted.

6 MR. McKEON: Sure. It is, the course outlined
7 from the National Academy of Railroad Sciences. It is
8 in Appendix 21. It has not a numbered document.

9 (Pause.)

10 MR. McKEON: So if we get into the course
11 outlines, the first one is Open Top Loads, Brake Car
12 Air Brake Basics, Brake Car Air Brake Advance, Rib
13 Track, Railroad Inspection Repair. Air Billing and the
14 next one is Freight Car Train Yard Course Topics,
15 Protect Your Rights, two hours.

16 MR. HERNANDEZ: Oh, all right. That is
17 segment would have to deal with an individual that does
18 not feel that the instructions he has been given in
19 accordance with the regulations and he has the right
20 and is empowered to make that known to his supervisors.

21 MR. McKEON: Thanks. Continuing on, on these
22 course outlines, there is one titled Locomotive Air
23 Brake Basic. Seven pages, Locomotive Air Brake Basic.
24 It says that the learning objective is to introduce the
25 students to the fundamental operation, maintenance and

1 trouble shooting techniques for 26L locomotive air
2 brakes. This course emphasizes Burlington Northern,
3 Santa Fe and FRA Air Brake Requirements. I was curious
4 as to why you would be emphasizing BNSF requirements
5 rather than UP requirements?

6 MR. HERNANDEZ: Well, the BNSF requirements
7 and the FRA requirements are the same, although the
8 BNSF may have additional requirements that are not
9 necessarily federal regulations that we have to comply
10 with. What we have done is taken those things that
11 best fit, whether they are from the UP or from the BNSF
12 and incorporate them into our training programs.

13 I can give you another example. We have
14 taken certain things like from the UP's timetable
15 instructions that best fit our operations rather than
16 take them from the BNSF, which we work jointly, for
17 example, on train makeup instructions as a team, the
18 three railroads, and we come up with certain things
19 that work best on our railroad but may not be
20 necessarily the same things that are done on another
21 railroad. We try to take the best from any particular
22 railroad, in this case, UP or BNSF.

23 MR. McKEON: The course entitled "Locomotive
24 FRA" has, its objective is learning about Federal
25 Railway Administration requirements and it indicates

1 that the course length may be adjusted to meet customer
2 needs. It shows as a five day course, but the length
3 can be adjusted. Has this course been adjusted for TFM
4 folks and if so, could you state for the record what
5 the adjusted length is?

6 MR. HERNANDEZ: Yes. For clarification
7 purposes, one of the terms that we use is our internal
8 and external customers, so our employees are customers
9 that receive this training. What we have done is those
10 Federal Regulations that we are affected by in our
11 international operations, we ensure that our employees
12 are receiving the training that they need to have in
13 order to be compliant with those Federal Regulations.
14 I cannot specifically tell you how we have adjusted
15 them, but I can tell you, for example, that check daily
16 locomotive inspections, for example, we make sure that
17 our employees at the border are totally conversed in
18 those regulations or 232 and so forth. But, I cannot
19 be specific with you as to what the adjustments are,
20 although I can tell you that anything doing, that has
21 to do with our international operations are totally
22 compliant.

23 MR. McKEON: Okay. Thanks, that is all I have,
24 Mr. Cothen.

25 MR. COTHEN: Okay.

1 MR. CASTIGLIONE: Just a follow up question, a
2 clarification actually, Gary, if I could. On page four
3 of your opening statement, you refer to the Z train,
4 ZMX train, is that the only train that will be covered
5 by this waiver or will there be additional trains as
6 well with a different symbol?

7 MR. DAVIDSON: There will be additional trains
8 as well with different symbols.

9 MR. CASTIGLIONE: Okay. How would we, how
10 would you propose notifying FRA so we would know how
11 those changes are added or added to the list and how
12 would you propose notifying FRA to that effect?

13 MR. DAVIDSON: Well, any train that arrives at
14 the Gateway, with a TFM air brake certificate, would be
15 a designated run through train. As we start this
16 procedure, once approved, the first train, of course,
17 will be the Z train, we intend to then add as many
18 additional trains as we can to get the biggest impact
19 from this waiver. And Frank and I would share that
20 information with the FRA so that they would be totally
21 onboard with us as far as which trains were the ones
22 that were engaged in the waiver.

23 MR. CASTIGLIONE: So, if the local inspector
24 showed up on the property, and there was a chance in
25 effect, he would have to essentially board the

1 locomotive to see whether or not it had a certificate?
2 Or would it be, what I am looking for maybe is some
3 advanced notification. We would have a heads up as to
4 which train is covered.

5 MR. DAVIDSON: Yes. We would, once again,
6 every train that shows up at the Gateway with a
7 certificate is a run through train.

8 MR. CASTIGLIONE: Okay.

9 MR. DAVIDSON: We would, if requested by the
10 FRA, provide advanced notification so that you
11 understood the type of trains that we were covering
12 under the waiver.

13 MR. CASTIGLIONE: This inspection as you
14 referred to, that is going to be done on a limited
15 basis in San Antonio, sort of, what two trains a week,
16 I believe is what you said?

17 MR. DAVIDSON: An audit process, yes, sir.

18 MR. CASTIGLIONE: An audit process. Will that
19 inspection entail like 1,000 mile inspection similar to
20 that or will it be just a sampling of a few cars within
21 that train?

22 MR. DAVIDSON: No, no, it will be a total
23 1,000 mile Class 1 inspection and it is the safety net
24 that we put in place to ensure that we have got the
25 quality control that is expected by both our companies

1 and the FRA. The process would be that we would select
2 two trains a week. They would come to San Antonio,
3 they would yard into the yard and we would do the total
4 head to toe Class 1 inspection. We would keep a log of
5 those trains by car number and by type of train. We
6 would log the defects, if any, that were found and we
7 would provide that information immediately to the TFM,
8 should we find a defect. We will implement, if we find
9 a pattern of defects, we will implement corrective
10 actions based on those. And each month we will have a
11 review of our findings with the FRA, who are invited to
12 come and with the TFM to go over each of the trains
13 that we audited and compare notes and see if there is
14 anything that we need to improve the process.

15 MR. CASTIGLIONE: The limited waiver that is
16 now in place that allows trains to essentially go from
17 the Bridge to Port Laredo, do you all still anticipate
18 still using that limited waiver or will that basically
19 go away?

20 MR. DAVIDSON: No, that limited waiver
21 actually was the precipitating event that helps start
22 growing traffic through the Gateway. That waiver
23 allows us to take trains to the Port only.

24 MR. CASTIGLIONE: Right.

25 MR. DAVIDSON: And get them into the Port

1 without the full inspection at the Bridge and that was
2 really one of the significant events that allowed this
3 traffic to grow at the rate it is growing now. That
4 would stay in place for all of the regular trains.

5 MR. CASTIGLIONE: Will there be any trains
6 that will need to be inspected in the lower yard if
7 this waiver is approved?

8 MR. DAVIDSON: We would reserve the right to
9 inspect a train in the lower yard, if the volumes were
10 to such a degree that we didn't have the capacity on
11 the main track to take a train, and we could seize an
12 advantage by inspecting it in the lower yard, we would
13 do that. We do not anticipate, at least initially,
14 with the volumes that we project, that we would need to
15 do that.

16 MR. CASTIGLIONE: Okay. Frank, I have a
17 question for you.

18 What about the train records, would those be
19 housed on this side or the other side and how would you
20 propose access to those training documents?

21 MR. HERNANDEZ: They would be housed in
22 Laredo, and as Gary previously stated, we have removed
23 those training records from the Tex Mex facilities at
24 their request, that they are housed there in Laredo and
25 the FRA has ready access, in fact, they have already

1 sat down with us and audited those records on one
2 occasion. They are there in the hard copy and of
3 course we also have every record that we can in
4 electronic form. The same records are maintained there
5 Nuevo Laredo at the current time and as Mr. Cothen
6 said, our plan is to move everything to Sanchez, so the
7 will be at Sanchez eventually, which is where
8 everything will be conducted. And finally, we will
9 also have a copy of those records in Monterrey, at our
10 headquarters, operating headquarters.

11 MR. CASTIGLIONE: Okay. Thank you.

12 MR. WILSON: Just to expand on something that
13 Mr. Castiglione brought up. Initially in your
14 statement you are saying, you tend to operate three
15 trains per day, but you envision almost every run
16 through train to take advantage of this waiver if
17 granted. Is that a correct assumption?

18 MR. DAVIDSON: What I said in the statement is
19 that we currently operate about three run through
20 trains a day through this Gateway. One of them is
21 currently receiving the Class 1 inspection that you see
22 in the graphs that were provided by Mr. Faulkner. When
23 this waiver is granted, we would then expand that to
24 the other run through trains that we are moving today.
25 This traffic is some of the faster growing traffic

1 that we have from a commodity perspective, so we
2 anticipate that these type of trains, auto trains, Z
3 trains or intermodal trains and empty grain trains,
4 would actually grow, so we would have more than three
5 per day.

6 MR. WILSON: And for clarification, do all of
7 these run through trains go to or through San Antonio
8 or is there another route that they could possibly
9 take?

10 MR. DAVIDSON: Yes, every train that goes
11 through Laredo comes through San Antonio.

12 MR. WILSON: Okay.

13 MR. DAVIDSON: The Laredo Subdivision is one
14 of the five spokes that comes out of the San Antonio
15 Terminal. You cannot get to Laredo without going to
16 San Antonio.

17 MR. WILSON: Okay. And this may be premature,
18 I think we have got another speaker coming up, but,
19 Frank, you did submit an email for the docket that
20 expressed interest for Tex Mex to also be party of this
21 waiver. Where do you envision or how do you envision
22 the application for that to take effect? How many
23 trains would they operate or --

24 MR. HERNANDEZ: What I submitted, Jim, was a
25 clarification as far as the records, where they were

1 maintained. This was being prior to receiving the
2 notification from Tex Mex that they no longer wanted
3 them on the property. And also to advise you that at a
4 later time, it had been indicated to me that Tex Mex
5 might possibly submit an official request for relief
6 under the waiver. Of course, that is totally up to
7 them, I am not saying that is the case, but --

8 MR. WILSON: Okay.

9 MR. HERNANDEZ: They might do so.

10 MR. COTHEN: Other questions from the FRA
11 Panel?

12 MR. HERRMANN: I have a couple.

13 MR. COTHEN: Mr. Herrmann.

14 MR. HERRMANN: On the quality control program,
15 you say that you will take two trains a week, will that
16 include a full 215 inspection as well as a Class 1
17 brake test?

18 MR. FAULKNER: On those designated under the
19 waiver.

20 MR. HERRMANN: On the two trains.

21 MR. FAULKNER: Yes.

22 MR. HERRMANN: Yard sources, are there any,
23 are you going to be using Yard Air down at TFM
24 facility?

25 MR. HERNANDEZ: That is our plan to eventually

1 use Yard Air in compliance with the --

2 MR. HERRMANN: And you will follow, and your
3 intent is to -- Let's see.

4 (Pause.)

5 MR. HERRMANN: That is about all I had, I
6 think all the rest of mine were asked.

7 MR. CASTIGLIONE: One more. We are looking at
8 the possibility of these trains operating from the
9 border into the United States 1,000 miles. For the
10 record, is that what --

11 MR. FAULKNER: Texacanka or North Little Rock.

12 MR. CASTIGLIONE: Okay. So that would be the
13 first time these trains would get any sort of brake
14 inspection if this waiver was granted.

15 MR. FAULKNER: Yes, sir.

16 MR. CASTIGLIONE: With the, excuse me, but
17 with the exception of the two that we are going to
18 audit in San Antonio.

19 MR. FAULKNER: Yes, sir.

20 MR. CASTIGLIONE: Okay. Is there any way that
21 they would go somewhere else other than North Little
22 Rock or Texacanka? That is the route that they, the
23 route they travel and not, I have checked with Service
24 Design, Jim and we have no intention of ever changing
25 that route in the foreseeable future. Okay. So those

1 trains will continue to go the same routes they go
2 today.

3 MR. FAULKNER: Yes.

4 MR. McKEON: Mr. Hernandez, your email of
5 September 23 that Mr. Wilson mentioned, you refer to
6 the Texas Mexican Railroad, Tex Mex as a sister
7 company, could you tell me what the corporate
8 relationship is between the two railroads?

9 MR. HERNANDEZ: Yes. When TFM was privatized,
10 the Mexico Government, the SCT granted the concession
11 rights to the successful bidders, which were in this
12 case, Transport -- Mexicana, which is better known as
13 TMM, and to the Kansas City Southern Railroad. The
14 Kansas City Southern Railroad owns 49 percent basically
15 of the outstanding shares and TMM 51 percent, although
16 there are some other shares that are still held by the
17 Government. The Tex Mex is or was partially owned KCS
18 and TMM and so are we. So, we are all related. It is
19 also known as the NAFTA Railroad. We are all
20 connected, KCS, Tex Mex and TFM. And that is, that is
21 our relationship with them.

22 MR. McKEON: Thank you.

23 MR. COTHEN: Let me try -- I believe it is the
24 case also that Service Transportation Board has before
25 it a proceeding related to the acquisition by Kansas

1 City Southern of the majority interest in Tex Mex. Is
2 that also correct?

3 MR. HERNANDEZ: The Tex Mex is, the sale of
4 the Tex Mex is pending approval by the Service
5 Transportation Board, that is correct. But, at the
6 current time, we are still related and just like I
7 explained.

8 MR. OPAL: Bob Opal, Union Pacific. I believe
9 that the proceeding is in abeyance right now.

10 MR. COTHEN: Can you identify yourself?

11 MR. OPAL: Bob Opal, Union Pacific Railroad.
12 I believe that that proceeding is in abeyance right
13 now. Mr. Streeter probably has more accurate
14 information about its status.

15 MR. COTHEN: Could you repeat it, she didn't
16 capture that for the record?

17 MR. OPAL: I believe that the proceeding Mr.
18 Hernandez referred to at the Service Transportation
19 Board is currently in abeyance. Mr. Streeter, who I
20 understand is here, will probably have more information
21 on that, if you want to approach that with him.

22 MR. WILSON: One more question, Grady. We
23 have concentrated on train inspections, train brake
24 inspections, safety appliances, freight cars, but for
25 the record, are we also talking about locomotives?

1 What kind of locomotives are bringing these trains into
2 the United States? Are they UP locomotives? And if
3 so, then these trains that don't get stopped at San
4 Antonio for the audit inspection, would continue to
5 Little Rock basically on the calendar day inspections
6 that it receives in Mexico, is that correct?

7 MR. HERNANDEZ: Our personnel, mechanical
8 personnel and locomotive engineers are trained on the
9 daily locomotive inspections procedure. But, you are
10 correct, Jim, the procedures would be the same for the
11 UP. They would accept our daily locomotive inspection,
12 but would still be required to conduct another one as
13 required by the Regs whenever that calendar day ran
14 out.

15 MR. WILSON: Will they be UP locomotives
16 bringing them into the United States and will they be
17 fully compliant with all of the requirements of the
18 United States?

19 MR. HERNANDEZ: All of the locomotives that we
20 use that cross into the U.S., in fact, all the ones we
21 use in Mexico, period, are compliant with FRA
22 regulations because they come across the border
23 constantly.

24 Now, I cannot speak to whether every train
25 that UP runs will have their own locomotives. That is

1 Gary's.

2 MR. DAVIDSON: Let me try to clarify that for
3 you.

4 MR. WILSON: Okay.

5 MR. DAVIDSON: The way we handle the
6 interchange at Laredo is the southbound trains that we
7 interchange are carried by Union Pacific locomotives,
8 either our own locomotives or ones that we have under
9 horsepower hours with other U.S. railroads. Those
10 locomotives currently go to the receiving yard in the
11 Nuevo Laredo area, are taken off and then are put back
12 on the next northbound train coming back to us.
13 Occasionally we will grant permission for one of our
14 locomotives to continue into Mexico as far as
15 Monterrey, to help them address congestion issues that
16 we are working through each day on conference calls.
17 But, virtually every locomotive that comes back north
18 across the border is a Union Pacific locomotive, either
19 under lease or one of our own that we have purchased.

20 MR. COTHEN: Mr. Herrmann?

21 MR. HERRMANN: Our power brake regulations,
22 Part 232 require that single car tests be performed
23 when certain repairs are made and every so often, every
24 five years at least. Are you going to conduct single
25 car tests at your facility in accordance with Part 232?

1 My first question. My second question piggybacks
2 that, do you have access to the Homly(ph) system in
3 which to access single car test information or to enter
4 single car test information?

5 MR. HERNANDEZ: We conduct single car test in
6 Mexico at the present time. We are AAR members. We
7 have access to Homly. We have, we conduct those tests
8 and make those repairs in Mexico at the current time
9 and have been doing so for several years.

10 MR. COTHEN: Any further questions from the
11 FRA Panel?

12 MR. WILSON: I noticed in the submittal that
13 your defect cars were in Spanish and I was just
14 conferring with my colleague here and he says he
15 believes on the back side it is in English, is that
16 true?

17 MR. HERNANDEZ: Every form that we use in our
18 border operations and in fact, Jim, almost all in
19 Mexico, is bilingual. It is in English and in Spanish.

20 MR. WILSON: Okay. But, you only the Spanish
21 side and there was a picture of it in the submittal and
22 I just wanted to make sure for the record.

23 MR. HERNANDEZ: And the air brakes
24 certificates, everything is dual language.

25 MR. WILSON: Bilingual. Okay.

1 MR. COTHEN: All right. Thank you very much
2 for that testimony. And if you will kind of stay in
3 the area, we might a follow up or two, after the
4 additional testimony.

5 I am going to, say the witnesses are excused
6 and what I think I would like to do is, we have Mr.
7 Streeter submit to the docket on behalf of Texas
8 Mexican Railway Company and since that appears to be
9 affect the arrangements under the petition, I thought
10 maybe we would hear from him first, and get all that on
11 the record and then anyone who wants to comment on
12 additional witnesses, who bring a little different
13 perspective, will have an opportunity to comment on the
14 whole thing.

15 (Pause.)

16 MR. COTHEN: Now before Mr. Streeter
17 identifies himself for the record and makes whatever
18 remarks he needs to make, I do want to clarify that
19 current docket has to do with only Union Pacific
20 trains, northbound from TFM. That is the scope of the
21 current document based upon the petition and public
22 notices issued.

23 And at the outset it was anticipated that
24 Texas Mexican Railway Company as a volunteer would
25 serve as a custodian of records and you heard the

1 clarification of the current situation on that from the
2 Petitioner and now we hear from Mr. Streeter. If you
3 would identify yourself.

4 MR. STREETER: Yes.

5 PRESENTATION BY RICHARD STREETER:

6 MR. STREETER: My name is Richard Streeter,
7 I am with the law firm of Barnes and Thornburg and we
8 are appearing today as counsel for the Texas Mexican
9 Railway Company.

10 My comments are very abbreviated. Texas
11 Mexican Railway Company fully supports the UP's waiver
12 petition. However, Tex Mex is concerned that the
13 record retention proposal as originally proposed, was
14 vague and could perhaps subject Tex Mex to potential
15 liability for records relating to UP trains that would
16 normally be maintained by UP.

17 Given Mr. Davidson's comments this morning,
18 Tex Mex's concerns have been alleviated in that it
19 appears that UP is willing to keep their own records
20 for their trains, but, and so as a result it appears
21 that our concerns have been pretty much mooted. And
22 that concludes my comments.

23 MR. COTHEN: Thank you, sir. Any questions
24 from the Panel? Hearing none, you are excused. And
25 thank you very much.

1 MR. STREETER: I should perhaps say one other
2 thing in response to the, Tex Mex right now is
3 operating pursuant to voting trust. The KCS has filed
4 an application with the Service Transportation Board,
5 comments were filed yesterday by the opponents. Our
6 comments are due 15 days from today or from yesterday.
7 The Board is required to issue its determination by
8 December 1. We have received kind of an informal
9 notification that more than likely the decision will
10 come out before Thanksgiving.

11 MR. COTHEN: Thank you, Mr. Streeter. And just
12 further for the record, the Staff Director from Motor
13 Power Equipment is here today and he and others are
14 working with the Parties on Safety Integration Plan of
15 that proposed acquisition.

16 Okay. Let's, I tell you what let's do, let's
17 take a break of not more than 10 minutes. There are
18 facilities here nearby, trying to make sure we get
19 everyone in and any witnesses who want to view the
20 exhibits that have been brought forward, would have an
21 opportunity to do so in that break before they make
22 their remarks. And then we will start with Mr.
23 Johnson, immediately following the break.

24 (Whereupon, a short recess was taken.)

25 MR. COTHEN: Okay. If our court reporter is

1 ready, we will go back on the record.

2 And we have representatives from the
3 Brotherhood of Railway Carmen Division, Transportation
4 Communications International Union and so welcome, Mr.
5 Johnson, do you want to lead off and introduce your
6 colleague.

7 PRESENTATION BY RICHARD JOHNSON:

8 MR. JOHNSON: My colleague here is my legal
9 counsel, Mitch Krause, K-R-A-U-S-E.

10 Good morning. My name is Richard Johnson,
11 and I have been the Division President of the
12 Brotherhood of Railway Carmen Division of the
13 Transportation Communications International Union,
14 which I will refer to as BRC, since 1996.

15 BRC represents employees employed by,
16 employed as carmen by each of the Class 1 carriers,
17 including the Union Pacific as well as certain Class 2
18 and Class 3 carriers, commuter railroads and Amtrak.

19 BRC represents the eight UP Carmen working in
20 Laredo, Texas, whose responsibilities include
21 inspection of trains originating in Mexico.

22 I am also appearing here today on behalf of
23 the International Brotherhood of Electrical Workers,
24 who were unable to be present. The IBEW represents the
25 individuals employed by the nation's rail carriers as

1 electricians and electrical foremen, including those
2 employed by the Union Pacific. There are five UP
3 electricians and one UP electrical foreman working at
4 Laredo, Texas, who are responsible for the inspection
5 of locomotives on trains originating in Mexico that
6 pass through Laredo on their to the United States.

7 Before addressing the substance of the issues
8 raised by UP waiver application, I want to thank the
9 Board for extending the time to submit written comments
10 and for scheduling this oral hearing here today.

11 Now, I am here today to offer BRC's and
12 IBEW's comments on a waiver application submitted by
13 the UP on July 29, 2004 seeking the waiver of 49 CFR
14 232.20, Class 1 test initial terminal inspections,
15 232.409; inspection and testing of end of train
16 devices; 215.13, pre departure inspections; and 229.21,
17 locomotive daily inspections. BRC AND IBEW represented
18 employees currently perform all of the involved train
19 inspection tests in Laredo, Texas on trains originating
20 in Mexico. Glaringly absent from the UP's filing is a
21 request for a waiver from 29 CFR 174.9, hazmat
22 inspections, or any discussion of how UP would inspect,
23 under their inspection system that they are seeking,
24 intends to comply with the hazmat regulations.

25 The UP maintains that all necessary

1 inspections are being performed by employees of the TFM
2 Railroad and that it should not be required to
3 reinspect trains a few miles away after they cross the
4 border from Mexico. UP urges that the TFM employees
5 are properly trained to perform these inspections and
6 that absent any understanding with the Mexican safety
7 agencies, TFM can permit FRA inspections to occur, to
8 assure its compliance with FRA standards. For the
9 reasons I will be discussing, UP's contentions can not
10 withstand scrutiny.

11 First, under 49 CFR 232.215, the only test
12 that is required in Mexico is a transfer test since
13 these trains are moving less than 20 miles. This test
14 is far less thorough than the Class 1 inspection given
15 by the UP employees in Laredo. Of course, these trains
16 come into the United States, they will travel far more
17 in 20 miles, while the Mexico transfer test might
18 reduce UP's claim in efficiencies. UP claim that TFM
19 employees are already performing Class 1 inspections
20 that will comply with FRA regulations is disingenuous
21 to say the least.

22 BRC represented Carmen and IBEW represented
23 electricians are currently inspecting trains at Laredo,
24 Texas, which according to UP have already been
25 inspected by the TFM consistent with FRA standards.

1 I am submitting a summary of defects found by
2 the BRC representing Carmen at Laredo, Texas of trains
3 previously inspected by the TFM at Nuevo Laredo,
4 Mexico. This listing of defects is intermittent, not
5 daily. It is based on the handwritten documents kept
6 by our members showing defects they uncovered on
7 certain specific dates. This list should raise
8 significant doubts bout UP's contentions regarding the
9 quality of inspections performed by TFM. The trains on
10 this list are 80 to 90 cars in length. On same dates
11 nine cars were pulled from service or repaired for
12 violations of FRA rules, defects that went undetected
13 by the TFM.

14 Under UP's application, up to 10 percent of
15 the cars inspected by TFM, that contained serious
16 safety defects, would be permitted to travel up to
17 1,000 miles into the interior of the United States.

18 Second: UP has been struggling to improve the
19 efficiency of its own inspections, raising serious
20 questions about its ability to provide proper
21 inspections through another carrier, beyond the scope
22 of FRA's authority. The 2002 Safety Assurance
23 Compliance Program, which by the way, FRA was involved
24 in, and it is referred to as SAC-P, revealed an eight
25 percent defect ratio for inspected cars on the property

1 and a 45 percent defect ratio for inspected
2 locomotives. The recently completed 2004 SAC-P audit,
3 which was just completed last week, shows no
4 improvements in these rations.

5 Third: UP asserts that TFM inspectors have
6 the same training and skills as their American
7 counterparts. The results I have just described belie
8 that claim.

9 UP points to the training TFM inspectors
10 receive by the National Academy of Railroad Sciences to
11 support its claim. The BNSF relies on the Academy to
12 provide the same training to its apprentice inspectors.
13 There is a significant difference, however, between how
14 the TFM and BNSF use the Academy courses. For BNSF
15 these courses are an introduction to further extensive
16 training. BNSF Carmen apprentices must work for 732
17 days with a journeyman, and pass periodic tests to
18 demonstrate their proficiency before becoming a
19 journeyman. IBEW electricians must satisfy the same or
20 similar requirements before being deemed qualified to
21 perform electrical work. TFM relies only on these
22 introductory courses as a means of certifying TFM's
23 employees skills.

24 Fourth: As already noted, the UP waiver
25 application is strangely silent on how it intends to

1 comply with CFR 174.9, the Hazmat regulations. These
2 regulations require an inspection of each car for the
3 required markings, labels and placards as well as the
4 securement of closures and leakage. The regulations
5 are currently being reviewed by the Transportation
6 Safety Agency, TSA, and the FRA in coordination with
7 the office of Homeland Security. Current safety
8 concerns dictate that now is not the appropriate time
9 to entrust hazmat inspections to poorly trained foreign
10 nationals, and that cars undergoing less than rigorous
11 hazmat inspections should not be permitted to travel up
12 to 1,000 miles into the interior of the United States.

13 UP's waiver request is also silent as to how
14 it intends to comply with regulation 232.109 which
15 requires that the locomotive engineer be advised of the
16 operational status of dynamic brakes at initial
17 terminal or other locations where a locomotive engineer
18 begins operation of a train. At the border a new
19 engineer would assume control of the train. UP does
20 not state how the engineer will be provided this
21 information.

22 Fifth: UP's waiver request states that the
23 Tex Mex Railroad Company will be the carrier
24 responsible for maintaining the required documentation.

25 The Tex Mex in recently filed comments and in comments

1 here today states that it will not be responsible for
2 such records because it, and I quote, "does not wish to
3 subject itself to any potential liability with regard
4 to maintenance of records that have nothing to do with
5 its operations."

6 Tex Mex's withdrawal from the UP's scheme
7 underscores the difficulties posed were inspections to
8 be performed outside the U. S. by carriers beyond the
9 scope of FRA's enforcement authority.

10 Sixth: Notwithstanding the foregoing, UP
11 maintains that the waiver it is requesting is
12 consistent with the system in place currently on the
13 Canadian border. There are, however, very material
14 differences ignored by the UP.

15 CP and CN employees currently inspect trains
16 in Canada before they enter the U.S. and U.S. employees
17 inspect trains in the U.S. before they enter Canada.
18 In neither case is a re-inspection required by either
19 country.

20 This system was instituted in June of 1998,
21 after three years of cooperative discussions with
22 Transport Canada and the FRA. This process was agreed
23 to by both agencies, which arranged for their
24 counterpart to inspect trains outside their
25 jurisdictions, before trains entered their countries.

1 As a result Transport Canada and the FRA perform
2 inspections in each others countries.

3 No such relationship exists between the FRA
4 and its Mexican counterpart, and it is my understanding
5 that there is no agreement on a similar joint
6 inspection arrangement.

7 In the absence of a similar relationship that
8 exists between the FRA and Transport Canada, UP has
9 proposed a private system of regulation whereby TFM
10 would agree to FRA inspections in Mexico. UP does not
11 explain how FRA officials would be permitted to perform
12 their functions in Mexico by the Mexican government.
13 Nor does UP explain how sanctions are to be enforced in
14 the event they are imposed by the FRA, or even whether
15 such sanctions could be legally enforced under these
16 circumstances. Nor does UP say where the FRA, which
17 already is hard-pressed under existing appropriations
18 to fulfill its statutory responsibilities, would find
19 the additional necessary monies to finance travel into
20 Mexico to monitor TFM's operations.

21 Seventh: Up asserts that, to assure
22 compliance, UP itself will inspect two trains of the
23 many trains per week that originate in Mexico. UP
24 fails to state when, where or how these twice weekly
25 inspections will occur. The Laredo facility operates

1 24 hours a day, seven days a week, doing these
2 inspections now.

3 BRC believes that these inspections, like the
4 inspections done for Canada, should be done by the FRA
5 at the border crossing so that no excuse can be made
6 for the defects found. Anything less than that will
7 amount to the fox watching the hen house.

8 Finally, we believe that the FRA should
9 consider the long term implications of what UP is
10 proposing. Laredo is not the only gateway for rail
11 traffic into the United States and these are not the
12 only trains that come from Mexico. Do not act hastily
13 as this petition for exemption is likely to be a
14 stalking horse for what the industry wants to
15 accomplish in the future, the greater reliance on
16 Mexican facilities for the maintenance and repair of
17 their rolling stock and locomotive fleets and the
18 easing of what they consider to be too much oversight
19 of car and locomotive safety by the federal government.

20 In summary, it is respectfully submitted that
21 the FRA should deny this particular requested waiver
22 because:

23 Inspections of trains originating in Mexico
24 demonstrate a significant number of defects missed by
25 TFM;

1 UP has offered no credible explanation of how
2 TFM employees will be trained to effectively enforce
3 FRA safety standards;

4 Unlike the situation in Canada, there is no
5 agreement or procedures for inspection verification
6 with the Mexican authorities, no assurance that FRA
7 could enforce any remedial actions it deems necessary
8 for violations it uncovers, or indeed any means to
9 assure that FRA inspectors would even be permitted to
10 come into Mexico to perform the limited oversight that
11 UP contemplates;

12 UP has offered no explanation how FRA's
13 hazmat regulations would be enforced under the
14 carriers' proposal.

15 Thank you for your consideration of these
16 views.

17 MR. COTHEN: Thank you, Mr. Johnson.

18 Questions from the FRA Panel?

19 MR. CASTIGLIONE: Mr. Johnson, just one
20 question. Would the BRC entertain any level of a
21 limited waiver, maybe more narrow in scope as proposed
22 by the UP? For instance as a pilot project, something
23 in that --

24 MR. JOHNSON: I don't know how we could
25 without even seeing what you are talking about. I

1 don't know how I could answer that question without
2 seeing what it is you are talking about. And this was
3 a tough enough issue here, trying to get what the
4 petition was and everything that was submitted, that
5 supposedly supported UP's request for or supported the
6 Mexicans statement that all these people were receiving
7 training was in Mexico. I mean, how do we develop the
8 differences between the languages, how do we develop,
9 you know, what exactly it says. The fact that we heard
10 this morning that the forms are in dual languages, all
11 you have to do is flip over the card to get the Mexican
12 version or the English version, that is the first time
13 we have heard that.

14 MR. CASTIGLIONE: So that is a no.

15 MR. JOHNSON: That is a no.

16 MR. CASTIGLIONE: Thank you.

17 MR. COTHEN: We will ask parties, I know you
18 have began to do it already, but, to exchange documents
19 to the extent necessary so that we can maintain our
20 schedule unless some intervening factors suggest that
21 we shouldn't and that we should extend it.

22 Mr. Johnson has provided a statement for the
23 record, an oral statement and a list of effective
24 conditions found by Carmen at Laredo.

25 MR. JOHNSON: Can I say just one more thing?

1 MR. COTHEN: Yes, sir.

2 MR. JOHNSON: The carrier in the presentation,
3 UP, had provided those, the one for, or less I should
4 say of defect ratios in their trains. They have an
5 opportunity to do it on a daily basis with their
6 records. What I have provided you with something that
7 our carmen give us and as I said, it is a random type
8 basis because they are working all day long, and they,
9 you know, to keep a second list going on, it is just
10 impossible to have. But, it surely belies what the UP
11 said in their statement, in their presentation that it
12 is less than one percent defect ratio. These trains as
13 you see under the date, those numbers or those letters
14 are, in fact, the same trains that they include in
15 their statement for the defect ratio.

16 MR. COTHEN: Okay. Thank you very much for
17 your testimony today.

18 MR. JOHNSON: Thank you.

19 MR. COTHEN: We have Brotherhood of Locomotive
20 Engineers and Trainmen, please.

21 (Pause.)

22 MR. COTHEN: Mr. Briggs is going to put a few
23 additional copies on the front, so if Mr. Briggs and
24 Mr. Harvey, would identify yourselves for the record,
25 and proceed as you see fit.

1 MR. BRIGGS: My name is Terry Briggs,
2 B-R-I-G-G-S. I am the Chairman of the Brotherhood of
3 Locomotive Engineers and Trainmen, Texas State
4 Legislative Board.

5 MR. HARVEY: My name is Robert A. Harvey,
6 H-A-R-V-E-Y, Brotherhood of Locomotive Engineers and
7 Trainmen, Regulatory Research Coordinator, BLET offices
8 in Washington, D.C.

9 PRESENTATION BY TERRY BRIGGS:

10 MR. BRIGGS: Thank you for giving us this
11 opportunity today. I do want to say that I am
12 authorized by our President, National President, Don
13 Hahs, to speak on behalf of the Brotherhood of
14 Locomotive Engineers and Trainmen today.

15 We have numerous concerns and questions
16 regarding the Union Pacific request to eliminate train
17 and locomotive air brake and mechanical inspections on
18 trains entering the United States in Laredo, Texas, and
19 substitute that inspection with one done in Mexico.
20 Our concerns are driven by the need for safety of our
21 members who will be operating the trains and
22 locomotives affected by the proposed changes, as well
23 as the safety and security of the citizens of the
24 communities through which these trains will be moving.

25 The Union Pacific has provided numerous

1 documents in support of the request for waiver. Upon
2 studying these documents, the Spanish translation of 49
3 CFR, the key parts, 232, 215, 229 and 231, causes us
4 concern. They are not a direct translation of U.S.
5 regulations. These documents are provided to show how
6 the TFM railroad employees are trained in FRA
7 regulations and what training material is used in that
8 training. However, comparison of the provided
9 documents to the English version of the same CFR parts
10 reveals substantial differences exist between the
11 English and Spanish versions. For example, in the
12 Spanish version of 49 CFR there are numerous instances
13 where text is omitted or deleted and they range from
14 single words or paragraphs and phrases and even entire
15 sections that number up to 20 or 30 pages. In
16 addition, the Spanish translation is from an outdated
17 version of 49 CFR, one that lacks any mention of
18 locomotive sanitation requirements that have been in
19 effect in the United States since 2002. The
20 translation from English to Spanish is, in itself, not
21 properly done. For example, the original translator
22 used the American system of writing dates, rather than
23 the Latin American system and that sounds awkward to
24 the Spanish reader. Additionally, many accents marks
25 were omitted, and that is the equivalent of a

1 misspelling. These examples are offered as an
2 illustration of the questionable overall quality of the
3 material that is used to train the personnel who will
4 be charged with conducting the inspections in
5 accordance with the current FRA regulations. If the
6 regulatory language is incorrect in the Spanish
7 version, we can fully expect the quality of the
8 training material to be questionable. It is,
9 therefore, doubtful that the training TFM employees
10 receive is fully compliant with 49 CFR.

11 BLET is also concerned about the differences
12 in language used by U.S. and Mexico and the problems
13 that will undoubtedly arise if joint operations are
14 undertaken. In April 2004, the Kansas City Southern,
15 (KCS) and Grupo, TMM, a Mexican transportation company,
16 released separate statements regarding the decision of
17 an arbitrator the two companies had used to settle a
18 dispute over a contract that Grupo TMM had attempted to
19 cancel. The KCS press release said in pertinent part,
20 "that both parties agreed to discharge in good faith
21 all the obligations of the acquisition agreement" while
22 the Spanish version Grupo TMM released said, "the two
23 companies have agreed to free themselves from all
24 obligations of the contract of sale." A Spanish
25 translator misinterpreted the meaning of the simple

1 word "discharge" and that lead to two press releases
2 that had exactly the opposite meaning from one another.

3 This misunderstanding caused little more than friction
4 between the two companies, however, a misunderstanding
5 of the meaning of instructions on how to perform an air
6 test of inspection could lead to a catastrophic
7 accident. If such a misunderstanding can happen
8 between KCS and Grupo TMM, it is not a stretch of the
9 imagine it can happen between Union Pacific and the
10 TFM.

11 Additionally, Union Pacific proposes the
12 tests and inspections performed by TFM be documented by
13 dual language documents. These documents are integral
14 to safe railroad operations and are vital in accident
15 investigations. BLET is not convinced that all
16 applicable Spanish documents, which have been provided
17 with this request for waiver, have been checked to
18 ensure they maintain the same meaning as their U.S.
19 counterpart.

20 The United States and Mexico also use different
21 units of measure. FRA has expressed concern in the
22 past regarding these differences, and how the
23 difference may affect rail safety in joint operations
24 between the United States and Mexico. BLET shares
25 those concerns. Documents, provided with this request

1 for waiver, do not reassure the BLET that the units of
2 measure that are used to conduct the tests and
3 inspections in Mexico will be consistent with those
4 prescribed in FRA regulations and that proper training
5 has been given those employees who will be using them.

6 Neither the Union Pacific nor FRA has
7 addressed the issue of accountability for those persons
8 responsible for conducting inspections and tests in
9 Mexico. FRA has the authority to impose civil
10 penalties against railroads and their employees for
11 failure to comply with safety related regulations.
12 These penalties are in place to act as an effective
13 deterrent against lax inspections and the use of non-
14 compliant or unsafe equipment. Clearly, FRA has no
15 jurisdiction in Mexico and therefore, no method of
16 ensuring compliance other than TFM railroad's voluntary
17 cooperation. Regulations governing railroads in the
18 United States have been developed over many years and
19 are in place, along with the applicable penalties, to
20 force compliance precisely because railroads in the
21 U.S. have demonstrated time and again, an unwillingness
22 to voluntarily provide adequate safe guards for their
23 employees and the public. BLET has great difficulty
24 understanding how allowing the TFM railroad, which is
25 based in Mexico, to voluntarily comply with FRA

1 regulations, as would be the case if this waiver is
2 granted, is consistent with FRA's mission to continue
3 to improve rail safety. Additionally, BLET seeks an
4 explanation as to which railroad will be held
5 accountable should an inspection by TFM fail to detect
6 defective equipment, and that subsequently leads to an
7 accident, injury or release of hazardous material.

8 Union Pacific proposes that all applicable
9 records be kept by the Tex Mex Railroad's Chief
10 Mechanical Officer as well as TFM's offices in Nuevo
11 Laredo, Mexico. You know, I understand that the Tex
12 Mex has decided or ask that they not be a party to this
13 and that they would no longer maintain those records,
14 however, we have heard statements that there would
15 still be some records maintained in TFM's office in
16 Nuevo Laredo. In the waiver statement, though, FRA
17 states, that the records will be maintained solely by
18 Tex Mex. I understand that will probably be Union
19 Pacific now. There is confusion here. Just where will
20 the records be kept and to what degree will FRA and
21 others have access to them? This ambiguity is yet
22 another example of an absence of forethought with
23 regard to the regulations and their relevance to
24 safety. No consideration should be given to allowing
25 any waiver so long as there is a question of FRA's

1 access to the record keeping.

2 Union Pacific proposes that locomotive daily
3 inspections on northbound trains be done in Mexico by
4 TFM employees. However, Union Pacific goes on to say
5 that locomotives used to deliver trains to the TFM
6 generally return to the United States in less than 24
7 hours. Given this fact, BLET sees no good reason why
8 the locomotive daily inspections cannot continue to be
9 done by the Union Pacific employees in the U.S. where
10 an enforceable standard is already in place.

11 And we want to say that the BLET understands
12 the City of Laredo's wish to reduce the problems of
13 rail congestion within the city, and their desire to
14 eliminate, as much as possible, the problems of blocked
15 crossings as trains are inspected and prepared for
16 departure. We do, however, believe that elimination of
17 the train air brake and mechanical inspections is too
18 drastic a step in seeking the solution to the
19 congestion there. Rather, we urge the Union Pacific to
20 look to other options, such as infrastructure
21 improvement, and more employees to conduct inspections.

22 In fact, FRA, Union Pacific, Tex Mex and several Rail
23 Unions have already cooperated in providing one option
24 to alleviate the congestion in Laredo. That option
25 includes the use of the Tex Mex Port Laredo facility.

1 The Union Pacific, however, has chosen not to fully
2 utilize this option.

3 The Department of Homeland Security and
4 Transportation Security Administration as well as BLET
5 are currently raising awareness of security
6 vulnerabilities that exist in the freight rail system
7 in the United States. With respect to this operation,
8 the inspections that are currently done on trains in
9 Laredo provide an added layer of security. Because
10 approval of this proposal would remove that redundancy
11 and lessen the security on those trains, BLET urges the
12 Department of Homeland Security and the Transportation
13 Security Administration to study this proposal and make
14 their findings a part of the record.

15 In summary, BLET believes this request for
16 waiver of compliance is directly contradictory to
17 ongoing efforts FRA has made to conduct more thorough
18 and more effective inspections of railroad freight
19 equipment and to further enhance safe rail operations.

20 If increasing the Laredo Gateway capacity is to be
21 achieved, it should be achieved using other options
22 short of exporting regulatory oversight of safety
23 critical locomotives and equipment to a country that
24 has not demonstrated the same safety culture as in the
25 United States. The impact this waiver may have on

1 matters of security must be addressed. Based upon that
2 request, and to allow ample time for additional
3 comments on this complex proposal, BLET requests that
4 the public record of these proceedings be held open for
5 an additional 60 days.

6 Thank you and I will be happy to try and
7 answer any question you have at this time.

8 MR. COTHEN: Mr. Briggs, thank you for being
9 here today. I appreciate your attention to the Spanish
10 translation of the standards that the Petitioner has
11 proffered. Would you be able to provide us just, you
12 know, within the period left for comment, just some
13 examples, just, it doesn't need to be exhaustive, but,
14 call attention to some examples that you noted so we
15 would have a place to start in terms of comparing the
16 standards.

17 MR. BRIGGS: Sure, would be happy to provide
18 some additional examples of that, sure.

19 MR. COTHEN: You noted the sanitation material
20 be missing.

21 MR. BRIGGS: Yes.

22 MR. COTHEN: But, apart from that.

23 MR. BRIGGS: Yes.

24 MR. COTHEN: More nuance things that might
25 escape notice if we didn't pay direct attention to it.

1 MR. BRIGGS: Okay.

2 MR. COTHEN: Thank you. You requested an
3 additional 60 days to develop the record here.
4 Obviously, there are some issues that would need to be
5 resolved to decide this favorably should we elect to do
6 so. However, it is also the ability to impose
7 conditions on a waiver, such that it may not, the
8 latitude may not be exercised absent satisfaction of
9 the conditions. Could you, could you indicate what
10 precisely we would accomplish with an additional 60
11 days for comment?

12 MR. BRIGGS: Well, I think that the additional
13 60 days is necessary just because that, I don't believe
14 that anything that has been addressed in here today or
15 in the Petition for Waiver compliance has addressed the
16 security problems, security, potential security
17 problems that would be, come into play if this were
18 granted. And in order to give the agencies that we
19 mentioned ample opportunity to look at the proposal,
20 and they may find that nothing is wrong, but, I think
21 they should be given an opportunity to do it and that
22 is the reason we were requesting the additional 60
23 days.

24 MR. COTHEN: Well, I am puzzled by that, you
25 know, at the Bridge in Laredo, a facility maintained by

1 the Department of Homeland Security, Customs and
2 Immigration officials are there, and the equipment,
3 behind the locomotive consist is gamma rayed every unit
4 of the consist, far more extensive inspection of and
5 more thorough inspection of rail equipment and, for
6 instance, of containers coming into our ports, because
7 of the inability to do 100 percent sample. And then
8 there is physical inspection of locomotive units by
9 Customs personnel at that location. I am just
10 wondering what mechanical inspections down in the
11 neighborhood in Laredo add to that?

12 MR. BRIGGS: Well, I think that anybody that
13 would be looking for vulnerabilities along our borders
14 would quickly learn that those trains after they cross
15 the border, are no longer stopped in Laredo and torn
16 apart and looked at once again. And I think it just,
17 there is an opportunity for them to exploit that
18 vulnerability. I understand that the gamma ray device
19 is in use and has been for some time. And I also
20 understand that Union Pacific is looking to try to
21 increase the velocity of the train as it goes through
22 there. There are still just some questions there that
23 we would really wish these agencies mentioned would
24 take a look at this operation and give, you know, weigh
25 in on the record.

1 MR. COTHEN: Okay. Questions for members on
2 the Panel?

3 (Pause.)

4 MR. COTHEN: Thank you very much for being
5 today. We appreciate representation from BLET, Texas.
6 Thank you for coming.

7 MR. BRIGGS: We appreciate it.

8 PRESENTATION BY ROBERT HARVEY:

9 MR. HARVEY: Robert Harvey. Just a brief
10 comment. First of all, when I looked at this, I began
11 to look at it from much higher altitude than in Texas
12 because that is where Terry is from and of course, he
13 has the direct knowledge, but, as I did, and I re-read
14 the request for waiver, I was impressed by just exactly
15 what it was that we were actually asking for here, what
16 the Union Pacific was asking for. And I find in 229.21,
17 locomotive inspection, daily inspection, 215.13,
18 predeparture inspection, 232.205, Class 1 air brake
19 inspection, and 232.409, end of train devices, that
20 these are, in fact, the most probably important
21 regulations that we have to ensure that we are
22 operating safe equipment.

23 Those regulations and the quality check that
24 eventually occurs as a result of those inspections are
25 all done on safety critical equipment. You know, we

1 are talking about thousands of moving parts and parts
2 of a transportation system that we can't afford any
3 failure to oversee it. Those regulations, if you will,
4 are the living end of over a century of regulatory
5 experience. Going all the back to the previous ICC.
6 Now we have detailed those out since the Department of
7 Transportation in 1970, but certainly everything that
8 we have learned in 100 and some years of regulations in
9 this industry, indicates that these things are not
10 things that should be given up easily or transferred to
11 an area where it may not have the kind of regulatory
12 oversight that the FRA can provide.

13 Now I understand that NAFTA was established
14 for the purposes of increasing economic exchange
15 between North America and, the North American
16 Continent, and I understand, too, that most of those
17 economic considerations have been relatively successful
18 in Mexico. I look to the European union as an example
19 of how they address safety with respect to the creation
20 of a more uniformed trading system between countries.
21 The one thing that they establish from the onset, this
22 is almost 15 years ago, was that no country would
23 surrender any safety oversight of its transportation
24 network. I know that the experience with Canada, the
25 United States has been ongoing. We have a more common

1 safety culture with Canada then I think we have with
2 Mexico. But, I would just simply say that, that we
3 have not given this enough time to work in Mexico. And
4 presently the waiver as suggested, as requested by the
5 Union Pacific because of its significant potential for
6 not being enforced, those inspections stopped being
7 enforced, should be denied. We are just simply there
8 yet.

9 MR. COTHEN: Okay. I didn't mean to omit you,
10 I just didn't know that you were going to make a
11 separate statement, Mr. Harvey.

12 Any questions for or any questions for the
13 BLET panel?

14 Thank you both for being here today and for
15 your testimony.

16 United Transportation Union, please.

17 (Pause.)

18 MR. COTHEN: And if you could being by
19 identifying yourself for the record, please.

20 MR. ELLIOTT: Sure.

21 PRESENTATION BY DANIEL ELLIOTT:

22 MR. ELLIOTT: Good morning, my name is Daniel
23 Elliott, E-L-L-I-O-T. I am here on behalf of the
24 United Transportation Union. And I am the Associate
25 General Counsel for the United Transportation Union. I

1 am speaking on behalf of the United Transportation
2 Union here today.

3 As you probably know, United Transportation
4 Union represents the Trans Service employees on the
5 Union Pacific Railroad and also has members in all the
6 operating crafts. And as a result UTU would like to,
7 first of all, thank the FRA for the opportunity today
8 to present its comments in opposition to the waiver
9 request. But, I would also like to emphasize the fact
10 that UTU's most serious concern today about the waiver
11 is the safety of its members and the individuals it
12 represents.

13 And this one thing that I think most of us or
14 all of us can agree on is that if there is one life
15 lost as a result of this waiver, that would be one line
16 too many. And as a result the UTU asks the FRA to give
17 this request the closest scrutiny possible as we enter
18 into what is basically uncharted territory with the
19 trains coming over from Mexico through Laredo.

20 I also would like to commend the FRA for what
21 it has been doing in the last few years with respect to
22 safety issues and its attempt to improve the overall
23 accident and incident, accident and incident rates and
24 the overall equipment accident and incident rates and
25 also with respect to UP, and its attempts to improve

1 its accident frequency rates over the last several
2 years.

3 And UTU, I guess, in that line would like to
4 see the trend of improving those rates continue and
5 after reading this waiver request, believes that this
6 could hurt that trend towards positive, a more positive
7 safety record.

8 What I would like to point out, especially
9 with respect to the area that we are dealing with in
10 Texas, is that the most accidents of any state occurred
11 in Texas from 2000 to 2003, in fact, 10.4 percent of
12 the accidents in 2003 occurred in Texas. And also the
13 most highway rail crossing collisions, fatalities and
14 injuries in 2002 occurred in Texas of any state.
15 Also with respect to those Texas statistics, the second
16 most casualties of any state occurred in Texas from
17 2000 to 2003 and the fourth most non fatal incidents of
18 any state occurred during that same time period. So I
19 am just trying to point out that we are dealing with an
20 area where safety really needs to be given the utmost
21 consideration. And in addition to that, with respect
22 to the UP situation in Texas, the concern is even
23 greater because as everyone, I think, is well known
24 throughout the railroad community, the Union Pacific
25 has been suffering from considerable service slow down,

1 backlog and congestion throughout, which can impose
2 various operating problems with respect to safety.

3 And as a result UTU's concern and belief
4 would be that this type of waiver would further
5acerbate the problem that already exist in this area.
6 And along those lines, one of the reasons why UTU has
7 this concern is and this is not meant as a shot at TFM,
8 but, TFM is obviously in its infancy in comparison to
9 the American railroads, like Union Pacific, which have
10 been going on since the 1860s, I believe. And just as
11 a point of information, the TFM, I mean, the Mexican
12 Railroad System had been run by the government from
13 1914 to '96 and in the '95, as I understand it, only
14 about 15 percent of the Mexican freight was actually
15 carried by that railroad system, even to spite the bad
16 conditions on the rail. So, as you can see the
17 experience level there is not considerable. And also,
18 I think the overall view point of the government run
19 railroad, that it was not successful during that time
20 period, and as a result there was a sale of the system
21 to private entities like TFM and TFM has become the
22 largest, private entity of the railroads as I
23 understand it in Mexico. And that did not occur, that
24 sale of the concessions until December of '96, and the
25 operations as I understand it, already started in June

1 of '97. So, essentially what we are dealing with here
2 is a baby with respect to railroad operations. And I
3 am sure they are giving it the utmost attention in
4 attempting to do their best, but, still, nothing can
5 generally beat type of experience that a railroad like
6 the Union Pacific has.

7 Also during this same time period, there has
8 been a significant increase in traffic over this
9 railroad as I understand it, and as a result, I think
10 this railroad is undergoing considerable changes at all
11 times, as it grows into its evitable size.

12 And I think some of these same types of
13 problems in making a transition from one system to
14 another have been seen in the United States with
15 respect to the UP and its merger with the SP. There
16 was considerable problems. The CSXT has been having
17 considerable problems after its merger with operations.
18 And as we heard earlier today, the KCS at the present
19 time is going through a process at the Service
20 Transportation Board of buying or getting the, I guess,
21 the majority interest in the TFM. So, there could be
22 even further problems with respect to this system as
23 they go through a transitional period.

24 So I guess the bottom line with respect to
25 these comments that I have just made, is that UTU is

1 gravely concerned that taking these trains from a
2 railroad in its relative infancy and throwing this
3 amount of responsibility into an area which is already
4 going through difficult problems at the present time,
5 would cause more difficult, more difficulties with
6 respect to the trend in safety. As a result, UTU
7 opposes this waiver request and, and seeks to at least
8 wait for a time period until a system is more ironed
9 out through possibly conversations through, with the
10 parties involved including labor.

11 Thank you.

12 MR. COTHEN: Thank you, Mr. Elliott.

13 Any questions from the Panel?

14 (Pause.)

15 MR. COTHEN: Okay. Thank you very much for
16 your testimony.

17 MR. ELLIOTT: Thank you.

18 MR. COTHEN: Is there anyone else that, other
19 than the Petitioner, which will be invited back, that
20 needs to make remarks today?

21 If not, could we ask that our first panel,
22 Union Pacific, accompanied by TFM representatives, come
23 up to the table.

24 Let's take a five minute break.

25 (Whereupon, a short recess was taken.)

1 MR. COTHEN: Okay. Let's go back on the record
2 then.

3 Okay. Now we will begin or resume. We have
4 asked the Union Pacific Panel, including representation
5 from TFM to come back up so we could pepper you with a
6 few follow ups here based on the testimony we have
7 received, if you don't mind.

8 The first point is the issue of the hazardous
9 material regulations. For the record, it is 29 CFR
10 Section 174.9, which requires a ground level inspection
11 of hazardous material cars at their location where they
12 are placed in the train. That would be any, any car
13 required to be placarded. I assume our auto parts and
14 empty grain trains don't qualify, but I assume you
15 might have a container on one of those intermodal
16 trains that was required to placarded. What, what was
17 your thought about that?

18 MR. DAVIDSON: There would be some placarded
19 containers in the Z trains. And our waiver did not
20 address any change to the hazmat regulations. It is
21 not required to inspect for the hazmat placarding at
22 interchange locations with all the railroads. And, in
23 fact, it is our understanding that the Mexican Hazmat
24 requirements are more stringent and severe than those
25 of the United States.

1 Mr. Hernandez, I think could address the
2 difference between hazmat restrictions.

3 MR. COTHEN: Mr. Hernandez.

4 MR. HERNANDEZ: With regard to the hazmat
5 restrictions, as Gary stated, that is correct. Our
6 personnel are very well qualified, in fact, you know, I
7 am a little taken aback by a lot of the remarks I have
8 heard here today because it sounds like we are talking
9 about totally different places or countries or
10 railroads. One hundred percent of our field
11 supervisors and I don't mean 99 percent or 99.9, 100
12 percent of our field supervisors receive training
13 through TTCI and the BOE on inspection procedures
14 dealing with hazardous materials. That is not to say
15 that they don't receive training on the Federal
16 Regulations that apply to these movements of hazardous
17 materials. We are part of the Dangerous Goods Advisory
18 Council as well. Every one of our field supervisors is
19 trained at least at an operations level, many at a
20 technical level, some at site commanders level. And we
21 have numerous tank car specialists. FRA has conducted
22 joint inspections with us at the border and seen the
23 quality of work that our people do at the border and I
24 refer specifically to hazardous materials. I don't
25 know of any railroad in the world that has 100 percent

1 of their field people and I refer to operating people,
2 but, I just don't refer to mechanical, our
3 transportation people and our maintenance of way
4 supervisors receive the same identical training. So,
5 if anyone has concerns about hazmat movements in
6 Mexico, I am glad they are concerned, but, it is, it is
7 a total misconception as to what goes on and what level
8 of training our individuals get with regard to
9 hazardous material movements.

10 MR. COTHEN: Okay. Just as further background
11 for the record, you know, FRA administers and enforces
12 department hazardous material regulations applicable
13 to movement by rail. We also develop ratios by
14 Research and Special Programs Administration, the
15 portions specifically related to movement by rail,
16 including Part 174. The witnesses are correct, several
17 years back Section 174.9 was amended to remove the
18 requirement for inspection of interchange, but remains
19 as a requirement to inspect what is placed in the
20 train. Any requests for exemption from the provision
21 would be appropriately addressed to the Research and
22 Special Programs Administration.

23 So, what we will probably do is do some
24 internal consultation within the Department of
25 Transportation on that to see if we are missing

1 anything on that issue. You have heard the testimony
2 today and Parties can comment on the extent to which
3 they are reassured or not reassured by the
4 representations that have been made here.

5 But, as I understand it, Mr. Hernandez, and
6 you can perhaps confirm this or not, your position
7 would be that for the trains involved, that they are in
8 fact inspected in accordance with 174.9 or will be
9 prior to delivery to the Union Pacific.

10 MR. HERNANDEZ: They are currently and will
11 continue to be. And as an added note, we have an BOE
12 inspector on our premises, a gentleman who has been
13 there with us for years and we conduct audits on these
14 tank cars on a very regular basis.

15 MR. COTHEN: Thank you.

16 Another issue raised by one our witness, Mr.
17 Johnson, had to do with making sure that crews
18 receiving trains on the Union Pacific at Laredo have
19 information regarding the status of dynamic brakes.
20 The operational status of those brakes. Are
21 preparations being made should this waiver be granted,
22 are they taking into consideration that requirement?

23 MR. HERNANDEZ: We are already in compliance
24 with that. In fact, I personally addressed that with
25 the representatives of FRA and even some of the members

1 of the panel. And we are totally in compliance with
2 that. In fact, I don't know whether it is included in
3 the submission.

4 MR. COTHEN: Okay.

5 MR. DAVIDSON: That is contained in Tab 15.

6 MR. COTHEN: Reference has been made to Tab 15
7 of the submission.

8 One of the concerns raised was that
9 inspection of trains at San Antonio might involve some
10 ambiguity as to whether defects had arisen in route
11 from Laredo. Previously, in discussions related to
12 this waiver, it had been suggested informally, I
13 believe, although it may be a docket item, I am not
14 sure, that FRA could request at any time that a train
15 delivered at the border be stopped at the run around
16 track in downtown Laredo for inspection as a, as an
17 occasion matter on the request of FRA. If FRA should
18 make such a request, would Union Pacific honor that
19 request?

20 MR. DAVIDSON: Yes, we would.

21 MR. COTHEN: Okay. The only other point that I
22 had before yielding to my colleagues was the issue of
23 security was raised by Mr. Briggs. And we discussed
24 the arrangements at the border for inspection of the
25 consist on delivery northbound and by the Department

1 Homeland Security, I suppose Petitioners might,
2 Petitioner might take the opportunity to ask the police
3 department whether or not it has any comment upon that
4 concern that is raised in supplements, docket,
5 appropriately. I don't suppose there is anything to be
6 said about it today, but.

7 MR. DAVIDSON: Well, Mr. Cothen, I actually
8 could comment on that.

9 MR. COTHEN: Sure, go ahead.

10 MR. DAVIDSON: In support of your comments, as
11 you know from your visit there, the security of the
12 trains coming across the, all of the international
13 gateways in the last 24 months has increased to the
14 degree that they are more secure than virtually any
15 train that we interchange any place else. And the
16 reason is we have implemented the gamma ray technology
17 to x-ray every car that is coming across the border.
18 And they are looking for a variety of things. They are
19 looking for contraband. They are looking for illegal
20 aliens who may be trying to cross into the country.
21 They also look for compliance issues to be sure, if a
22 car is suppose to have automobile engines in it, that
23 it actually has automobile engines. So, there is, they
24 are doing a very extensive internal review of the cars
25 that is not conducted any place else because of the

1 cost of these machines.

2 In addition, the inspectors are there
3 physically to check the lead engine before we put a
4 crew on it and it does not go through the gamma ray
5 technology, but it is inspected visually by the
6 Department of Homeland Security. And then they stay
7 with our crew, as this train comes in, looking for any
8 abnormalities that may be present that the gamma ray
9 machine might not detect. The Border Patrol also now
10 is a sub department of Homeland Security, takes
11 liberties on these trains with their train dogs, to
12 inspect them as they come across in conjunction with
13 the regular transportation inspections as well as our
14 police. Our rail police are down in there as part of
15 the normal interchange process.

16 One inspection that was eliminated in our
17 discussion was the fact that every northbound train
18 coming into the United States is stopped at Gardendale,
19 Texas, which is about halfway between San Antonio and
20 Laredo. It is stopped for a major border patrol
21 inspection with dogs, and it is driven from the lead
22 engines to the rear car. Once again, inspecting for
23 any type of illegal entry into the United States,
24 anything that would be unusual that would have happened
25 to the train in that first 175 miles of its trip. And

1 there is also a border inspection place just north of
2 the border, where they have access to occasionally stop
3 a train and look there just to try to change their mode
4 of operations. So, the trains coming out of the
5 international gateways are perhaps the most secured
6 trains we operate in this country.

7 MR. HERNANDEZ: Mr. Cothen, if I might be able
8 a little bit to that. We mirror the Union Pacific in a
9 lot of ways and that is another way. Our head of
10 security is an American, a U.S. citizen, and he is not
11 the only one, although he is the principal one that
12 forms part of the committees that Homeland Security has
13 jurisdiction of. We have thousands and thousands of
14 security people on the property. That is a fact. The
15 Mexican Army on a regular basis conducts inspections of
16 our trains. We conduct inspections, not only with our
17 personnel but with K-9 inspections as well, just like
18 Gary mentioned. And then after everything is finished,
19 those trains can go to the bridge. But, that occurs on
20 100 percent of the trains that we receive at Sanchez or
21 Nuevo Laredo, and I refer to the inspections by our
22 security personnel.

23 MR. COTHEN: Well, thank you. We have, of
24 course, FRA has ongoing liaison with the Department of
25 Health, Homeland Security, too many acronyms in this

1 town. And in particular, Transportation Security
2 Administration, and it does not appear at this juncture
3 that any party is directly requested any comment from
4 them on this, however, we do have an intra governmental
5 coordinating function that is very active. So, we will
6 certainly ask them if they are going to have any say on
7 that.

8 Any questions from colleagues on the Panel?

9 MR. CASTIGLIONE: Just one follow up if I may,
10 Gary.

11 What kind of coordination do you envision to
12 follow up also on Grady's question about inspecting
13 additional trains if this waiver was approved. What
14 kind of coordination do you envision that our
15 inspectors at the field level would be, have to give
16 you in order to make that understood that it is their
17 intent to inspect the train?

18 MR. DAVIDSON: The only, we had mentioned, I
19 think in my opening comments and certainly in the
20 waiver request, that we were going to conduct the audit
21 process at either Laredo or San Antonio with our focus
22 mostly on San Antonio, because the whole purpose of the
23 waiver is to increase flow through Laredo. The only
24 requirement we would have is that if we are going to do
25 an additional random inspection at Laredo in the RG run

1 around, is that once this waiver is implemented, we are
2 going, we intend to use that run around for southbound
3 trains, so that we can improve the service to our
4 customers on the main track. We would just need to
5 know about it somewhat in advance, maybe one window in
6 advance, six hours, so that we could make provisions to
7 bring the southbound trains down on the main track.
8 Obviously, if we had staged trains into the RG run
9 around for a southbound move, and we were out working
10 the main track, if we suddenly had to stop all the
11 trains that we expected to go straight through San
12 Antonio, that might cause us some difficulty there.

13 But, we, we have a very close relationship
14 with the FRA inspector in San Antonio. He lives there.

15 We are one of two railroads that he has to work with,
16 so, we have almost daily contact with him. I don't
17 anticipate there be any trouble. If he wanted to
18 increase or accelerate our audit inspections, we would
19 be able to comply with his request.

20 MR. CASTIGLIONE: Okay. Just one other
21 question, if I may kind, not really off topic, but
22 getting down a little further, I guess that would be
23 North of Eagle Pass, would there be any intention at
24 any time, do you perceive, when the provisions of this
25 waiver might be extended to trains, for trains coming

1 to Eagle Pass?

2 MR. DAVIDSON: The waiver, itself, only
3 addresses Laredo Gateway.

4 MR. CASTIGLIONE: Right.

5 MR. DAVIDSON: Because it has been such a
6 single significant point of growth. However, all the
7 gateways grow. And I think the unions and us hope that
8 we continue to get more and more business into Mexico.

9 So, we would inspect this to be totally successful at
10 Laredo. And if conditions warrant it, we would want to
11 expand it to the other gateways.

12 MR. CASTIGLIONE: Thank you.

13 MR. WILSON: The two trains you inspect per
14 week, how to you envision selecting these trains or is
15 this planned out months in advance or --

16 MR. DAVIDSON: Oh, no.

17 MR. WILSON: Because I know that you have got
18 problems with calling crews and everything, and
19 obviously you wouldn't want a crew standing by while
20 somebody is making an inspection. So, I am just kind
21 of wanting to know how, what your procedures would be.

22 MR. DAVIDSON: Right. On a normal day, we get
23 two AMXAS trains, which are auto trains, one Z train
24 and then on a ciprocal nature, we get grain trains.
25 And we would envision that each month based on the type

1 of traffic we had, the percentage of trains that we
2 stopped, would be based on the percentage of traffic we
3 are getting. For example, if 70 percent of the trains
4 were autos, we would want to inspect 70 percent of the
5 auto trains in this audit process. If it was 25
6 percent Z trains, then we would want to stop 25
7 percent, you know, the percentage of our inspection
8 would be 25 percent Z, 75 percent auto. If a grain
9 rush came along, which it does, it moves in a real
10 ciprocal nature, and we suddenly had a bunch of grain
11 trains coming, we would insert some grain trains into
12 that. So, the audit procedure would be a reflection of
13 the type of, you know, of the trains audited in the
14 process would be a reflection of the total trains
15 moving into the interior of the country.

16 MR. COTHEN: Any other questions from the FRA
17 Panel?

18 Hearing none, again, we thank you for being
19 here today and for your response to the questions.

20 As of now, this proceeding, which has been
21 extended, yes, sir, Mr. Streeter?

22 MR. STREETER: Can I make one quick comment?

23 MR. COTHEN: Would you take the microphone
24 there, please?

25 MR. STREETER: Yes. Mr. Elliott in his

1 comments made a statement --

2 MR. COTHEN: State your name for the record.

3 MR. STREETER: Richard Streeter, for the Tex
4 Mex, again.

5 Mr. Elliott made the statement that KCS is
6 before the STB seeking approval of its acquisition of
7 the majority interest of TFM. I think that is a
8 mistake. It is acquiring the control of the Tex Mex.
9 It is not before the STB for the TFM. And I want the
10 record to reflect that. Thank you.

11 MR. COTHEN: Okay. Thank you, Counselor, for
12 that correction.

13 Now on the issue of schedule. We started
14 this conversation with parties before a waiver was even
15 filed back in May, I am not sure how sustained the
16 conversation has been among the parties. But, it has
17 brought us into a Friday hearing. And we try to avoid
18 those. Right now we are scheduling closing of the
19 comment period on October 8. We have one request to
20 extend the comment period justification related to
21 security. And when we consult the Transportation
22 Security Administration, we find that we need to take
23 some kind of particular action, that may or may not
24 involve extension of the comment period since we may
25 receive information from sister agencies and Government

1 without, without doing in somewhat of a public way and
2 giving the subject matter of security, we might elect
3 not to do so in a public way. Or it may be
4 appropriate to do so, depending upon the nature of the
5 comment, in which case we would need to hold the docket
6 open.

7 Putting that aside for a moment so we can
8 discuss other things, are there any other request for
9 the docket to be held open longer than October, close
10 of business October 8, and if so, on what basis?

11 Mr. Johnson, could you please come to a
12 microphone.

13 MR. JOHNSON: I think we agree, from what we
14 have learned today and a lot of things have come out, I
15 think we need more time to get information into the
16 record.

17 We also have, as you know, another oral
18 hearing coming up the week after next on --

19 MR. COTHEN: I am going to repeat what Mr.
20 Johnson said. He suggested that there is a lot more we
21 need to get into the record and he is calling attention
22 to another proceeding unrelated that will tax the
23 parties in terms of making submissions. And now, Mr.
24 Johnson, I am looking for specifically, you know, what
25 you would be willing to develop and expect to submit

1 that would warrant holding the docket open longer.

2 MR. JOHNSON: Well, we heard the carrier say
3 their defect ratio and they have shown on paper that
4 their defect ratio is less than one percent. I think
5 if we are given a little bit more opportunity, we can
6 prove that that defect ratio is not proper, it is not
7 the right rate. Just from what I have shown you so far
8 on a, on a scan type basis, on a random type basis,
9 belies what they are saying.

10 MR. COTHEN: Okay. Well, thank you, Mr.
11 Johnson. Keeping in mind that the Federal Railroad
12 Administration has conducted its own field
13 investigation of this waiver request, I would invite
14 parties through its own personnel, by the way, and to
15 do inspection of actual trains accompanied by a carrier
16 and officials as well as probably by working carmen.

17 I would suggest that anyone who has a desire
18 to have the record held open longer than October 8,
19 give us by October 8 any specific plans that you have
20 in terms of, you know, what specific information you
21 anticipate delivering and by what date, and a
22 justification for why, that that time is required in
23 order to develop the information. I appreciate that
24 parties have to work across multiple proceedings, but,
25 so does this Agency. And, you know, that is something

1 that we all have to expect to do.

2 So, we will look for future submissions that
3 are specific as to the need and the specific
4 deliverables that parties are going to be able to bring
5 to us, so that we can make the best decision.

6 And, but parties should submit their best
7 shot by the close business on October 8, and any
8 remaining specific points that they, that parties wish
9 to bring to us. The matter, I think of extending it
10 beyond October 8 would be a matter of whether or not
11 there is any material, new data that could be induced.

12 Because I think we have had adequate opportunity to
13 discuss issues as such on a qualitative basis.

14 Okay. Anything else before we adjourn today's
15 hearing? If not, we appreciate the participation of
16 all concerned and the courtesy of each of toward the
17 other. And we wish you safe travel.

18 (Whereupon, at 11:40 a.m., the hearing was
19 concluded.)

1 REPORTER'S CERTIFICATE

2

3 This is to certify that the attached

4 proceedings before:

5 **FEDERAL RAILROAD ADMINISTRATION**

6 In the Matter of:

7 **UNION PACIFIC RAILROAD HEARING**

8 were held as herein appears and that this is the

9 original transcript thereof for the file of the

10 Department, Commission, Board, Administrative Law Judge

11 or the Agency.

12 Further, I am neither counsel for or related

13 to any party to the above proceedings.

14

15

16 *Debbie Derr*

17 Official Reporter

18

19 Dated: **OCTOBER 12, 2004**

AVAILABILITY OF NON-SCANNABLE ITEMS

FRA 2004-18746
Docket/Document Number

Old Docket Number, If any

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